



**THE LAW AND PRAXIS OF  
INTERNATIONAL HUMAN RIGHTS**

**VOLUME 3**

**Professor Nehal Bhuta**

**Fall 2008**

**Faculty of Law  
University of Toronto**

BORA LASKIN LAW LIBRARY

AUG 28 2008

FACULTY OF LAW  
UNIVERSITY OF TORONTO

**THE LAW AND PRAXIS OF  
INTERNATIONAL HUMAN RIGHTS**

**VOLUME 3**

**Professor Nehal Bhuta**

**Fall 2008**

**Faculty of Law  
University of Toronto**

## The Law and Praxis of International Human Rights

**LAW294H1S, Fall 2008**

**3 Credits**

**Monday 4.10 pm – 7 pm**

**Instructor:** Nehal Bhuta

**E-mail:** [nehal.bhuta@utoronto.ca](mailto:nehal.bhuta@utoronto.ca)

**Office Hours:** By appointment

**Office Phone:** 416 946 7989

This course aims to achieve two goals: first, to equip students with a technical competence in articulating, interpreting and responding to claims made in the language of international human rights law, and to enable students to navigate sources, principles and arguments effectively, and; second, to induce students – even as they familiarize themselves with the law of human rights – to simultaneously understand “human rights” as a field of political praxis. Through the course, students will ideally become more reflexive in understanding the diverse, and at times contradictory, political effects of articulating claims in terms of human rights, and the way in which “human rights” are used in local, national and global political struggles. Students will be encouraged throughout the course to “think the limits” of human rights as a political praxis, and the pros and cons of articulating demands in the language of human rights. Readings will be drawn from both law and social sciences.

### **Readings:**

Readings are available in a course-packet from the Bookstore. Some readings not contained in the packet will be distributed ahead of the relevant classes.

### **Evaluation:**

#### A. Analytical Paper (40%)

A 10 page (12 point font, double-spaced) analytical paper that engages with readings from at least two topics covered in the course. The analytical paper will demonstrate your command of the material you have read, by providing a concise synthesis of the argument in one or more readings, engaging in a confrontation and comparison of the arguments between different readings, and providing a reasoned critique of these arguments.

Time will be reserved in class in week 3 to discuss further the expectations for the analytical paper.

The paper will be due 4 December and must be submitted to the Records Office and identified only by your student number.

#### B. Take-home Examination (60%)

A 24-hour take-home exam to be signed out from and returned to the Records Office. The examination may be taken during any 24 hour period between the first day of the

examination period and due no later than the set deadline for written work in the applicable term.

The examination will be in the form of a hypothetical problem raising human rights law issues, and a short essay question. A word-limit on the take-home examination will be strictly enforced.

### Reading Schedule

**\* Note: Because we meet on a Monday, we lose a number of classes to either holidays or scheduled interruptions, such as Off Campus Interviews. As a result, I have scheduled at least 2 makeup classes. One further class may be scheduled during the term.**

#### **Class 1: September 8**

- **What Are Human Rights? Politics, Philosophy, Law**

- a. Sir Hersch Lauterpacht, *International Law and Human Rights* (New York: Praeger, 1950) 94-123. .... 1
- b. Martti Koskenniemi, "Human Rights, Politics, and Love," *Mennesker & Rettigheter (The Nordic Journal of Human Rights)* 4/2001 pp. 33-45 (also reprinted in: *Finnish Yearbook of International Law*, Vol. 13 (2002) pp. 79-94).....17
- c. Richard Rorty, "Human Rights, Rationality and Sentimentality" in S Shute and S Hurley, eds, *On Human Rights: The Oxford Amnesty Lectures 1993*, Basic Books, New York, 1993, pp.111-134.....26
- d. Samuel Moyn, "On the Genealogy of Morals," *The Nation*, 16 April 2007. ....39

#### **Class 2: September 15**

- **Historical Origins: The Age of Revolutions, The Age of Extremes and Human Rights**

- a. Document: Universal Declaration of Human Rights.....46
- b. Lynn Hunt, *Inventing Human Rights: A History* (New York: Norton, 2007) 113-145, 176-200..... 52
- c. Mark Mazower, "The Strange Triumph of Human Rights, 1933-1950" *The Historical Journal*, Vol. 47 (2004) pp. 379-398..... 83
- d. Hannah Arendt, *The Origins of Totalitarianism* (Meridian Books: Cleveland and New York, 1958) Part II, Chapter 9..... 93
- e. A.W. Brian Simpson, *Human Rights and the End of Empire: Britain and the Genesis of the European Convention* (Oxford University Press: Oxford, 2004) ("The Burdens of Empire").pp. 276-8, 289-232.....112

#### **Class 3: September 22**

- **Human Rights and the Interstate System**

- a. Documents:
  - i. United Nations Charter, Arts 1, 2, 55-74.....132
  - ii. United Nations General Assembly, Resolution 60/251, establishing the Human Rights Council, 3 April 2006.....146
- b. Christian Tomuschat, *Human Rights between Idealism and Realism* (Oxford University Press: Oxford, 2004), pp. 112-131..... 150



- c. Hurst Hannum, ed., *Guide to International Human Rights Practice* (Transnational Publishers: New Jersey, 2004 [4<sup>th</sup> edition]), pp. 43-89.... **160**
- d. Letter of 14 April 2003 from U.S. Mission in Geneva to Special Rapporteur on Extrajudicial Killings..... **183**
- e. Philip Alston, "Reconceiving the UN Human Rights Regime: Challenges Confronting the New Human Rights Council," Center for Human Rights and Global Justice Working Paper, Number 4, 2006..... **188**

**[Note: No class on 29 September (Rosh Hashanah), October 6 (OCIs) and October 13 (Thanksgiving). Please use this time to read ahead]**

#### **Class 4: October 20**

- **The International Covenant on Civil and Political Rights (ICCPR)**
  - a. The Nature of Obligations
    - i. ICCPR, Preamble, Arts 1-5, Arts 46, 47, 50..... **228**
    - ii. Manfred Nowak, *CCPR Commentary* (NP Engel: Kehl am Rhein, 2005) pp. 27-30, 34-46, 57-72..... **235**
  - b. Extraterritoriality
    - i. ICCPR, Art 2 (1)
    - ii. Marc Bossuyt, *Guide to the "Travaux Préparatoires" of the International Covenant on Civil and Political Rights* (Martinus Nijhoff: Dordrecht, 1987) pp. 52-56..... **254**
    - iii. Nowak, *CCPR Commentary*, pp.43-45 (re-read).
    - iv. Declassified U.S. government documents (6 pages)..... **260**
    - v. Human Rights Committee: *Lopez Burgos v Uruguay* (1981) and *Concluding Observations on the Report of the State of Israel* (2003)..... **266**
    - vi. ICJ, *Legal Consequences of the Construction of a Wall in Occupied Palestinian Territory* (2004), paras. 102-113..... **280**
    - vii. European Court of Human Rights, *Ilascu v. Moldova* (2004) pp.41-59, 69-92..... **289**
  - c. The Human Rights Committee
    - i. ICCPR, Arts 28-41; Optional Protocol I (entire)..... **335**
    - ii. Henry Steiner, Philip Alston and Ryan Goodman, *International Human Rights: Law, Politics, Morals* (forthcoming, 2007), extract..... **339**
    - iii. Dominic McGoldrick, *The Human Rights Committee: Its Role in the Development of the International Covenant on Civil and Political Rights* (Clarendon Press: Oxford, 1991) pp.50-55, 71-79, 98-104. **347**
    - iv. Example of Periodic Reporting and Consideration by the Committee: United States of America, 2006 (extracted from Steiner, Alston and Goodman, forthcoming 2007)..... **370**

#### **VOLUME II**

- d. Human Rights Committee: General Comments
  - i. Philip Alston, "The Historical Origins of the Concept of 'General Comments' in Human Rights Law" in L. Boissons de Chazournes and V. Gowland Debbas, eds, *The International Legal System in Quest of Equity and Universality: Liber Americorum Georges Abi-Saab* (2001), extracted in Steiner, Alston and Goodman, forthcoming, 2007... **1**
  - ii. *Human Rights Committee:*
    - General Comment 31..... **7**

### **Class 5: Makeup class – Friday, October 24 (time and location TBA)**

- a. Procedure of Individual Complaints
  - i. Extracts of the Human Rights Committee Rules of Procedure.....12
- b. Article 4: Derogations in Times of Public Emergency
  - i. Human Rights Committee, *General Comment* 29.....16
  - i. Human Rights Committee, *Jorge Landinelli Silva et al. v. Uruguay*, *Communication No. 34/1978 (8 April 1981)*, U.N. Doc. CCPR/C/OP/1 at 65 (1984).....24
- c. Article 6: The Right to Life
  - i. Human Rights Committee, *General Comment* 6.....28
  - ii. Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, 1990..... 30
  - iii. Human Rights Committee, *Pedro Pablo Camargo v. Colombia [Guerrero v. Colombia]* *Communication No. 45/1979*, U.N. Doc. CCPR/C/OP/1 at 112 (1985).....34
  - iv. Human Rights Committee, *Ms. Yekaterina Pavlovna Lantsova v. The Russian Federation*, *Communication No. 763/1997*, U.N. Doc. CCPR/C/74/D/763/1997 (2002).....46
  - v. ICJ, *Construction of a Wall Advisory Opinion*, paras. 105-107
  - vi. Document: US Forces Rules of Engagement, Iraq..... 50

### **Class 6: October 27**

- a. Article 7: The Prohibition on Torture and Inhumane Treatment
  - i. Human Rights Committee, *General Comments* 20.....77
  - ii. Nowak, *CCPR Commentary*, pp. 161-168, 172-185.....80
  - iii. Human Rights Committee, *Almeida de Quinteros v. Uruguay*, *Communication No. 107/1981*, UN Doc. CCPR/C/19/107/1981 (1983).....92
  - iv. Human Rights Committee, *Boucherf v. Algeria*, *Communication No. 1196/2003*, CCPR/C/86/D/1196/2003 (2006).....103
  - v. Human Rights Committee, *Alzery v. Sweden*, *Communication No. 1416/2005*, UN Doc. CCPR/C/88/D/1416/2005 (2006).....116
- b. Article 9: The Prohibition on Arbitrary Detention
  - i. Human Rights Committee, *Beatriz Weismann Lanza and Alcides Lanza Perdomo v. Uruguay*, *Communication No. R. 2/8 (20 February 1977)*, U.N. Doc. Supp. No. 40 (A/35/40) at 111 (1980).....157
  - ii. *William Ednardo Delgado Páez v. Colombia*, *Communication No. 195/1985*, U. N. Doc. CCPR/C/39/D/195/1985 (1990).....165

### **[Reading week – November 3-7]**

### **Class 7: November 10**

- **The International Covenant on Economic, Social and Cultural Rights (ICESCR)**
  - a. What is a social right?

i.	Karl Polanyi, <i>The Great Transformation: The Political and Economic Origins of Our Time</i> (Beacon Press: Boston, 1941), pp.171-186, 257-268.....	172
ii.	Stephen Holmes and Cass Sunstein, <i>The Cost of Rights</i> (Norton: New York, 1999) pp. 35-48, 221-232.....	189
iii.	Issa Shivji, "Constructing a New Rights Regime: Promises, Problems and Prospects," (1999) 8 <i>Social and Legal Studies</i> , 253-276.....	205
<b>b. Human Rights and Economic and Social Rights</b>		
i.	Universal Declaration of Human Rights, arts. 22-27 (see Week 2)	
ii.	Matthew Craven, <i>The International Covenant on Economic, Social and Cultural Rights: A Perspective on its Development</i> (Clarendon: Oxford, 1995) pp. 16-29.....	230
iii.	<i>International Covenant on Economic, Social and Cultural Rights (ICESCR)</i> .....	238
<b>c. Nature of Obligations and the Committee</b>		
i.	ICESCR, Art. 2, Art 16-17.	
ii.	Craven, pp. 37-50 (creation of the committee), 87-92.....	242
iii.	Craven, pp. 109-116 (obligation to respect, protect and fulfill)....	254
iv.	Committee on Economic, Social and Cultural Rights, <i>General Comment No. 3</i> (1990), Nature of States' Parties Obligations....	259

#### **Class 8: November 17**

<b>d. <u>The Right to Health</u></b>		
i.	ICESCR, Art. 12	
ii.	General Comment 14.....	263
iii.	"Health" in Susan Marks and Andrew Clapham, <i>International Human Rights Lexicon</i> (Oxford University Press: Oxford, 2006) pp. 197-208.....	281
iv.	<i>Soobramoney v Minister of Health, Kwa-Zulu Natal</i> , Constitutional Court of South Africa, CCT 32/97 (27 November 1997).....	289
v.	<i>Minister of Health v Treatment Action Campaign</i> , Constitutional Court of South Africa, CCT 8/02 (5 July 2002).....	324
vi.	Marius Pictorse, "Eating Socioeconomic Rights: The Usefulness of Rights Talk in Alleviating Social Hardship Revisited," (2007) 29 <i>Human Rights Quarterly</i> , 796-822.....	402

### **VOLUME III**

#### **Further Reading:**

vii.	Sandra Liebenberg, "Needs, Rights and Transformations: Adjudicating Social Rights", CHRGI Working Paper 8/2005, pp.18-33.....	1
viii.	Varun Gauri, "Social Rights and Economics: Claims to Health Care and Education in Developing Countries" in Alston and Robinson, eds, <i>Human Rights and Development: Towards Mutual Reinforcement</i> (Oxford University Press: Oxford 2005) pp.65-86.....	18
<b>e. <u>The Right to Food</u></b>		
i.	ICESCR, Art. 11.	
ii.	General Comment No. 12.....	28
iii.	"Food" in Marks and Clapham, pp. 163-178.....	36



- iv. Jean Drèze, "Democracy and the Right to Food" in Alston and Robinson, eds, pp. 45-64..... 46
- v. Interim Order, Supreme Court of India, *PUCL v Union of India* (May 2003)..... 58
- vi. Smita Narula, "The Right to Food: Holding Global Actors Accountable Under International Law," CHRGJ Working Paper 07/2006, pp.14-24.....64

#### **Class 9: Makeup class – Friday, November 21 (room and time TBA)**

- **Human Rights and Political Praxis I**
- a. Andrew Moravcsik, "The Origins of Human Rights Regimes: The Origins of Democratic Delegation in Postwar Europe" Vol.54, No.2 (2000) *International Organization*, pp. 217-252.....75
- b. Sally Engle Merry, *Human Rights and Gender Violence: Translating International Law into Local Justice* (University of Chicago: Chicago, 2005) pp.36-70, 134-139, 179-81, 184-217..... 111
- c. Nicholas Guilhot, "Limiting Sovereignty or Producing Governmentality? Two Human Rights Regimes in US Political Discourse", forthcoming, 2008, *Constellations*..... 152

#### **Class 10: November 24**

- a. David Stoll, "To Whom Should We Listen? Human Rights Activism in Two Guatemalan Land Disputes," in Richard Wilson, ed., *Human Rights, Culture and Context: Anthropological Perspectives* (Pluto Press: London, 1997) pp. 187-215..... 176
- b. Mahmood Mamdani, "The Politics of Naming: Genocide, Civil War, Insurgency" *London Review of Books*, 8 March 2007..... 192
- c. Alex de Waal, "No Such Thing as Humanitarian Intervention: Why We Need to Rethink How to Realize the 'Responsibility to Protect' in Wartime," *Harvard International Review*, 2007.....202
- d. Joshua Kurlantzick. "Global Gun Rights?", *New York Times Magazine*, September 17, 2006.....207
- e. Kenneth Anderson, "The Ottawa Convention Banning Landmines, The Role of International Non-Governmental Organizations and the Idea of International Civil Society" Vol.11 (2000) *European Journal of International Law*, pp.104-120.....208

#### **Class 11: December 1**

- **The Futures of International Human Rights: Global Justice or Imperial Right?.**
- a. Makau Mutua, "The Limits of Rights Discourse," in *Human Rights: A Political and Cultural Critique* (University of Pennsylvania: Philadelphia, 2002) pp.126-153..... 226
- b. Jean Cohen, "Sovereign Equality vs. Imperial Right", manuscript, forthcoming in *Constellations: An International Journal of Democratic and Critical Theory*..... 255

